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HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 487 OF 2006

APPELLANT Lalita @ Rajni @ Baisakhiya @ Phulkumari

VERSUS

RESPONDENT State of Chhattisgarh

J U D G M E N T

POST ON 3rd OCTOBER 2007

Sd/-
DHIRENDRA MISHRA
Judge

2- 10.2007

(21)

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 487 OF 2006

APPELLANT — Lalita @ Rajni @ Baisakhiya @ Phulkumari, D/o Nandlal Khairwar, Aged 20 years, R/o Village – Kokadu, P.S.- Chainpur, Distt.- Palamu (Jharkhand)

VERSUS

RESPONDENT — State of Chhattisgarh Through Police Station Chando, District-Sarguja (CG)

Present:

Mr. C.R. Sahu, counsel for the appellant.

Mr. Sandeep Yadav, Dy. G.A. for the State.

JUDGMENT

(Delivered on 3rd October 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 08.05.2006 passed in S.T.No.198/05 whereby learned II Additional Sessions Judge (F.T.C.), Ramanujganj, Sarguja (C.G.) has convicted the appellant under Section 25(1b)(a) of the Arms Act and sentenced her to one year's R.I. and under Section 5 of the Explosive Substance Act and sentenced to undergo R.I. for five years. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that A.K. Xalko, Station House Officer, P.S. Chando received a secret information on 5.3.2005 that some women naxalites from Jharkhand are convening a meeting in village Karcha Chhawaritola on the eve of International Woman Day on 8th March 2005 for participating in the rally. He proceeded for the village, however, the women present there fled towards forest on seeing the police. One woman holding some papers i.e. naxalite literature and posters was apprehended, she was taken into custody and on search receipt book for collecting donation, two live cartridges and one 315 bore *deshi katta* (country made pistol) were seized from her. On being asked she told her name and also told herself to be the

regional secretary of M.C.C., naxal group. On the basis of above, First Information Report of Ex.P/7 was registered. The seizure was effected vide Ex.P/3. On her memorandum of Ex.P/2 a tiffin bomb containing gun powder and led mixed iron pieces were taken into possession under Ex.P/4. The seized tiffin bomb was sent for examination to Explosive Expert, S.T.F. Camp, Balrampur vide Ex.P/8 and report of the explosive expert is Ex.P/14. The District Magistrate accorded sanction for prosecution under Section 7 of the Explosive Substances Act (for brevity 'the Act') and Section 39 of the Arms Act vide Ex.P/10-A.

3. Charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Ambikapur and the same was received on transfer after committal by the learned Additional Sessions Judge for trial.

4. During trial the prosecution examined 11 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. wherein she pleaded innocence and false implication. However, learned trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

5. Learned counsel for the appellant submitted that the appellant has been prosecuted on the basis of forged and fabricated evidence. Her conviction is based on the recovery of alleged tiffin bomb on her memorandum. The witnesses of memorandum and seizure Shivdas (PW-2) and Ramsakal (PW-3) have turned hostile and they have not supported case of the prosecution. There is no evidence to show that the said tiffin bomb was examined by any explosive expert, neither there is any scientific evidence that the articles seized were, in fact, explosive substances.

6. On the other hand, learned counsel for the State supported impugned judgment of the trial Court.

7. I have heard learned counsel for the respective parties and have perused the impugned judgment as also the evidence available on record.

8. A.K. Xalko, SHO, P.S. Chando who conducted investigation has been examined as PW-7. He has stated that on 5.3.2005 on receiving a secret information that in village Karcha some naxalite women have gathered for preparation of rally to be convened on 8th March 2005 on the eve of International Woman Day, he reached village Karcha with force and encircled the village from outside. The participants of the meeting, the naxalite women, ran towards forest. However, one woman i.e. the present appellant, was apprehended and since on her search naxal literature, poster were found in her possession, she was taken into custody. On further search, receipt book for collecting donation, one 315 bore *deshi katta* and two live cartridges were seized from her. On interrogation she admitted herself to be the regional secretary of M.C.C. and from her bag a red coloured banner was seized in presence of Shivdas and Ramsakal. Seizure of cartridges, *katta,* red coloured banner and naxalite literature is Ex. P/3 which also includes one lady's bag and receipt book. Her memorandum was recorded vide Ex.P/2 and in pursuance thereof, a tiffin bomb was taken into possession vide Ex.P/4. The said bomb was sent for examination to Explosive Expert vide Ex.P/8. The Superintendent of Police sent a memo for sanction to conduct prosecution to the District Magistrate vide Ex.P/10. In cross-examination this witness has admitted that he did not register Dehati Nalishi on the spot after taking the accused into custody. He has also admitted that number of persons had gathered for celebrating International Woman Day in village Karcha. However, he has denied the suggestion that the appellant was arrested from a medical stores of village Chando.

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9. PW-2 Shivdas and PW-3 Ramsakal are residents of village Chando. Both of them are witnesses of memorandum of Ex.P/2, whereby *deshi Katta*, live cartridges have been seized at village Karcha on 5.3.2005 and a tiffin bomb has also been seized vide seizure memo of Ex.P/3 and seizure of Ex.P/4, respectively. PW-2 Shivdas in his examination-in-chief has stated that he along with Ramsakal were proceeding towards Karcha, at that time police persons 8-10 in number in a motorcycle came there and enquired from them and when they told that they are residents of Chando, they asked them to sit with them and thereafter brought a lady in a jeep. That lady was coming from Jharkhand side, she was carrying a bag and before them she was interrogated and *deshi katta*, banner, poster etc. were seized from her and seizure memo of Ex.P/3 was prepared. She also told her name and name of other members. The police also seized a tiffin bomb from that lady in his presence vide Ex.P/1. In cross-examination he has admitted that she was not apprehended in his presence and the police brought her in a Govt. jeep. He has also admitted that his signatures were obtained at P.S. Chando and before putting his signature the police did not read over the contents of the documents to him. He has also stated that document of memorandum was never read over to him nor he himself read it and he singed the same at the instance of police.

10. PW-3 Ramsakal, village Kotwar of Chando, has stated that he had gone to Karcha with Shivdas. On hearing commotion they reached there and saw that police persons had taken into custody a lady. They did not recognize her. One bag was seized from that lady. Her memorandum statement was taken by the police, however, she did not tell anything at that time. He has admitted his signature on the documents of Ex.P/2, P/3 and P/4. However, he has stated that he did not see the tiffin bomb at the time of seizure as told by the police. He has been declared hostile. In cross-examination this witness has denied the memorandum statement (Ex.P/2) of the appellant recorded. In cross-examination by the defence, he has admitted that he

signed all the documents in the police station and he signed those documents without knowing about its contents.

11. PW-11 Bhogilal, Platoon Commander, has stated that he received the seized tiffin bomb on 30.6.2005 on being produced by A.K. Xalko and when he opened it, he saw some light brown substance containing pieces of glass and *chharra* (iron pellets). He examined it by smelling, burning and putting it in water and found that the same was high explosive gelatin. His report is Ex.P/14. The article contained in the plastic polythene is, in fact, a box fitted with a steel lid, from the bottom hole of which two wires are there, it contained pieces of glass, iron, iron balls with gun powder and a detonator is also fitted with the wires, the same is still live and if both the terminals are connected with some battery, then it may explode.

12. PW-1 Vijay Kumar, has examined the country made pistol and two cartridges and has given his report of Ex.P/1 wherein it is mentioned that *katta* is still capable of being fired and the cartridges are refilled cartridges and they are live and capable of being fired by the above *katta.*

13. The Hon'ble Supreme Court in the matter of **Mohamad Usman Mohammad Hussain Maniyar and another Vs. The State of Maharashtra** reported in **AIR 1981 SC 1062** in paragraph 10 has held thus:

> *"10. In order to bring home the offence under Section 5 of the Explosive Substances Act, the prosecution has to prove; (i) that the substance in question is explosive substance; (ii) that the accused makes or knowingly has in his possession or under his control any explosive substance; and (iii) that he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for a lawful object.*
>
> *The burden of proof of these ingredients is on the prosecution. The moment the prosecution has discharges that burned, it shifts to the accused to show that he was making or*

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possessing the explosive substance for a lawful object, if he takes that plea."

14. In the instant case conviction of the appellant is based on the recovery of a tiffin bomb vide Ex.P/4 on the memorandum of Ex.P/2 of the appellant, however, from the depositions of witnesses of memorandum and seizure, the prosecution has not been able to establish the seizure of tiffin bomb from the custody of appellant for the following reasons:

(i) that the appellant was taken into custody in village Karcha on 5th March 2005 and other articles being *deshi katta,* cartridges, naxalite literature and posters etc. were seized on the same day allegedly at village Karcha in the presence of witnesses Shivdas and Ramsakal;

(ii) that her memorandum (Ex.P/2) was recorded on 6.3.2005 at police station Chando at 10.00 a.m. again in the presence of the same witnesses Shivdas and Ramsakal and on the basis of this memorandum the tiffin bomb was allegedly seized on 6.3.2005 under Ex.P/4. However, both these witnesses have stated that all the documents were signed by them in Police Station Chando without knowing its contents and without it being read over to them. None of the witnesses has stated that the appellant gave any disclosure statement regarding the alleged tiffin bomb.

(iii) That there is no evidence on record that the articles so seized, were in fact seized and placed in a safe custody;

(iv) That the tiffin bomb was said to have been sent for examination to the Explosive Expert vide Ex.P/8 by A.K. Xalko S.H.O. (PW-7). However, the above document does not contain dispatch number or the date on which it was sent. From the report dated

20.6.2006 of Platoon Commander Bhogilal also it does not appear as to on what date the same was received by him for examination though this witness has admitted in his deposition that this explosive substance was brought before him on 30.6.2005. Moreover, this witness has nowhere stated in his deposition that he has received any training or he has any expertise in examining the explosive substances and as such, there is no evidence available on record to show that he was an explosive expert.

15. Even otherwise, the cryptic manner in which the report of Ex.P/14 has been given, which contains subsequent addition and the inference that substance is high explosive and it is probably high explosive gelatin, it does not seem to be trustworthy. Thus, there is no conclusive evidence that the seized articles were in fact explosive substances within the meaning of explosive substances as defined in Section 2 of the Act.

16. On the basis of above discussions, this Court is of the considered opinion that the prosecution has firstly failed to prove the seizure of alleged tiffin bomb from the appellant on the basis of her disclosure statement beyond reasonable doubt and secondly, it has also failed to prove that the substances so seized were in fact explosive substances and in these circumstances, conviction of the appellant under Section 5 of the Act cannot be sustained. Conviction of the appellant under Section 25 of the Arms Act is based on recovery of country made pistol and live cartridges. The seizure witnesses have proved the recovery and Vijay K. Kujur (PW-1) who examined the weapon and cartridges, has proved that cartridges were live and the same could be fired by the *katta* recovered. This has not been challenged in the cross-examination.

17. In the result, appeal preferred by the appellant is partly allowed. While maintaining her conviction and sentence under Section 25(1b)(a) of the Arms Act, she is acquitted of the charge under Section 5 of the Explosive Substances Act. She is stated to be in custody since 7.3.2005 and as such, for the last more than 2 years and 6 months. Therefore, she is directed to be released forthwith if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge